

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No.: 3:13-CR-106-TAV-CCS-5
)	
JOY ELIZABETH BARRON,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This criminal case is before the Court on the defendant's *pro se* motion requesting additional credit for time served and for a sentence reduction [Doc. 242]. In the defendant's motion, the defendant requests that (1) she receive federal sentence credit for the six months that she was incarcerated prior to coming into federal custody in August 2013; and (2) the Court resentence her pursuant to 18 U.S.C. § 3582(c)(2) and in accordance with Amendment 782 and Amendment 788 to the United States Sentencing Guidelines Manual. The government has responded [Doc. 244]. The government asserts that the defendant's motion should be denied because (1) the Court has no statutory basis for granting jail credit and the defendant has not satisfied the prerequisites for judicial review; and (2) the defendant is not eligible for relief under § 3582(c)(2) because she was sentenced as a career offender.

I. Motion for Credit for Time Served

The calculation of a term of imprisonment for a federal prisoner, including any award of credit for time served, is governed by 18 U.S.C. § 3585.¹ “This Court cannot grant or compute sentence credits under 18 U.S.C. § 3585(b). That task is reserved for the Attorney General of the United States through the [Bureau of Prisons].” *United States v. Williams*, 2008 WL 3850212, at *1 (W.D. Tenn. Aug. 18, 2008) (citing *United States v. Wilson*, 503 U.S. 329, 333–34 (1992) and *United States v. Cobleigh*, 75 F.3d 242, 251 (6th Cir. 1996)).

Thus, a prisoner seeking credit for time spent in custody must first exhaust her administrative remedies through the Bureau of Prisons, *Wilson*, 503 U.S. at 335, and

¹ Section 3585 provides:

(a) Commencement of sentence.—A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.

(b) Credit for prior custody.—A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences—

(1) as a result of the offense for which the sentence was imposed; or

(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;

that has not been credited against another sentence.

18 U.S.C. § 3585.

failing that, petition the district court for habeas corpus review pursuant to 28 U.S.C. § 2241, *McClain v. Bureau of Prisons*, 9 F.3d 503, 505 (6th Cir. 1993). Any such petition generally should be filed in the district where the prisoner is being held. *See United States v. Garcia-Echaverria*, 374 F.3d 440, 449 (6th Cir. 2004) (“Absent special circumstances not present here, a petition for a writ of habeas corpus is properly filed only in a court that has personal jurisdiction over the alien’s immediate custodian.”).

Here, the defendant is incarcerated in Aliceville, Alabama. Therefore, even if the defendant had exhausted her administrative remedies—which has not been shown—the Court would not have jurisdiction over any habeas corpus petition brought pursuant to § 2241. Additionally, the defendant has not provided any other statutory basis for relief. *See United States v. Ross*, 245 F.3d 577, 586 (6th Cir. 2001) (stating that “[t]he authority of a district court to resentence a defendant is limited by statute” and “18 U.S.C. § 3582(c)(1)(B) expressly prohibits . . . resentencing of a defendant beyond those exceptions expressly enacted by Congress”). Therefore, the Court concludes that it lacks jurisdiction to grant the defendant relief.

II. Motion for Sentence Reduction

A. Standard of Review

“Federal courts are forbidden, as a general matter, to modify a term of imprisonment once it has been imposed, but the rule of finality is subject to a few narrow exceptions.” *Freeman v. United States*, 131 S. Ct. 3685, 2690 (2011) (internal citation and quotation marks omitted). One exception is identified in 18 U.S.C. § 3582(c)(2):

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . , the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

The United States Supreme Court has interpreted § 3582(c)(2) as setting forth two requirements for a sentence reduction. First, “the defendant [must] ha[ve] been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission[.]” *United States v. Riley*, 726 F.3d 756, 758 (6th Cir. 2013) (internal quotation marks and citation omitted). Second, “such reduction [must be] consistent with applicable policy statements issued by the Sentencing Commission.” *Id.* (internal quotation marks omitted). If the reviewing court determines that the defendant is eligible for a sentence reduction, then “[t]he court may then ‘consider whether the authorized reduction is warranted, either in whole or in part, according to the factors set forth in § 3553(a).’” *United States v. Thompson*, 714 F.3d 946, 949 (6th Cir. 2013) (quoting *Dillon v. United States*, 560 U.S. 817, 826 (2010)).

In determining whether a defendant has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission, the Court must first determine “the amended guideline range that would have been applicable to the defendant had the relevant amendment been in effect at the time of the initial sentencing.” *Dillon*, 560 U.S. at 827 (internal quotation marks and citation omitted); *see also* U.S. Sentencing Guidelines Manual § 1B1.10(b)(1). Other than substituting Amendment 782 for the corresponding provision applicable when the

defendant was originally sentenced, the Court “shall leave all other guideline application decisions unaffected.” *Id.* And the Court “shall not” reduce a defendant’s term of imprisonment to a term “less than the minimum of the amended guideline range,” nor to a term “less than the term of imprisonment the defendant has already served.” *Id.* § 1B1.10(b)(2)(A), (C).² In addition to these limits, section 1B1.10 states that a court must also consider the § 3553 factors and the danger to the public created by any reduction in a defendant’s sentence. *Id.* at cmt. n.1(B). A court may further consider a defendant’s post-sentencing conduct. *Id.*

B. Analysis

Amendment 782 to the Guidelines, which became effective on November 1, 2014, revised the Guidelines applicable to drug-trafficking offenses by reducing by two levels the offense levels assigned to the drug quantities described in section 2D1.1. U.S. Sentencing Guidelines Manual App. C, amend. 782. Amendment 782 also makes corresponding changes to section 2D1.11. Amendment 788, which became effective on November 1, 2014, as well, identified Amendment 782 as retroactive. U.S. Sentencing Guidelines Manual App. C, amend. 788.

Even if Amendment 782 were to lower the defendant’s offense level under Chapter Two, the career-offender provisions of Chapter Four would still apply. U.S. Sentencing Guidelines Manual § 1B1.10(b)(1) (directing the Court to “leave all other

² Section 1B1.10 provides one exception to the rule that a defendant may not receive a sentence below the amended guideline range—namely, if the defendant originally received a below-guideline sentence “pursuant to a government motion to reflect the defendant’s substantial assistance to authorities.” U.S. Sentencing Guidelines § 1B1.10(b)(2)(B).

guideline application decisions unaffected”). Section 4B1.1(b) provides that “if the offense level for a career offender . . . is greater than the offense level otherwise applicable, the offense level [as a career offender] shall apply.” That was the case here.

Accordingly, the Court lacks jurisdiction under § 3582(c) to modify the defendant’s sentence. *See, e.g., United States v. Riley*, 726 F.3d 756, 759 (6th Cir. 2013) (stating that “the sentences of career offenders under § 4B1.1 are not based on the § 2D1.1 ranges” (footnote omitted)); *United States v. Thompson*, 714 F.3d 946, 950 (6th Cir. 2013) (noting that defendant’s “status as a career offender essentially trumped the range established under the [drug] guidelines”); *United States v. Payton*, 617 F.3d 911, 914 (6th Cir. 2010) (explaining that “a defendant convicted of [drug] charges but sentenced as a career offender under U.S.S.G. § 4B1.1 is not eligible for a reduction based on [a retroactive amendment to the drug guidelines]” (internal quotation marks and citations omitted))); *United States v. Perdue*, 572 F.3d 288, 292–93 (6th Cir. 2009) (same).

III. Conclusion

For the reasons stated herein, the defendant’s motion [Doc. 242] is **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE